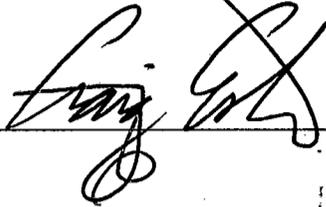


By:

 (Estes)

S.B. No. 1407

A BILL TO BE ENTITLED

AN ACT

relating to the demonstration of financial assurance by a local government in relation to the operation of a municipal solid waste landfill facility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0855 to read as follows:

Sec. 361.0855. DEMONSTRATION OF FINANCIAL ASSURANCE. (a)

In this section:

(1) "Bonds" means financial obligations issued by a local government, including general obligation bonds, revenue bonds, and certificates of obligation.

(2) "Local government" includes:

(A) a local government corporation created under Chapter 431, Transportation Code, to act on behalf of a local government; and

(B) a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution.

(b) Notwithstanding any requirement of the commission for the demonstration of financial assurance, a local government that owns or operates a municipal solid waste landfill facility regulated by this chapter is considered to have satisfied all requirements of the commission for the demonstration of financial assurance in relation to closure, post-closure, or corrective

1 action, if the local government:

2 (1) establishes and passes a financial test in  
3 accordance with commission rules; and

4 (2) demonstrates that the outstanding bonds of the  
5 local government that are not secured by insurance, a letter of  
6 credit, or any other collateral or guarantee have a current rating  
7 of AAA, AA, A, or BBB as determined by Standard and Poor's or Aaa,  
8 Aa, A, or Baa as determined by Moody's.

9 (c) A local government must demonstrate financial assurance  
10 under this section:

11 (1) before the date of the initial receipt of waste at  
12 the facility; or

13 (2) as soon as practicable if, on the effective date of  
14 this section, the facility was in operation and had received waste.

15 SECTION 2. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2005.

## BILL ANALYSIS

Senate Research Center  
79R6550 KEG-F

S.B. 1407  
By: Estes  
Natural Resources  
4/11/2005  
As Filed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Certain solid waste facilities are operated and maintained by a political subdivision created by an act of the legislature or an act of a local governmental entity. These facilities are not owned or operated by either a private entity or a single municipality, both of which have specific financial assurance requirements for a facility's closure and post-closure care periods, in accordance with requirements of the Texas Commission on Environmental Quality (TCEQ). TCEQ is forced to defer to the unclear language in the statute and demonstrate financial assurance by way of several financial vehicles for operation, despite the owner's or operator's governmental status.

Under current statute and TCEQ rules, all owners and operators of solid waste disposal facilities are required to demonstrate financial assurance to protect the state through a facility's closure and post-close care periods. Municipalities can choose to demonstrate financial assurance using their bond ratings. Unique political subdivisions, as described above, are not allowed to demonstrate financial assurance through the use of their members' bond ratings and their existence is unclear in statute.

As proposed, S.B. 1407 allows these unique political subdivisions to rely on their own financial strength to demonstrate financial assurance.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 361, Health and Safety Code, by adding Section 361.0855, as follows:

Sec. 361.0855. DEMONSTRATION OF FINANCIAL ASSISTANCE. (a) Defines "bonds" and "local government."

(b) Provides that a local government that owns or operates a municipal solid waste landfill facility regulated by this chapter is considered to have satisfied all requirements of the Texas Commission on Environmental Quality (TCEQ) for the demonstration of financial assurance in relation to closure, post closure, or corrective action, notwithstanding any requirement of TCEQ for the demonstration of financial assurance, if the local government establishes and passes a financial test in accordance with TCEQ rules and demonstrates that the outstanding bonds of the local government that are not secured by insurance, a letter of credit, or any other collateral or guarantee have a specific current rating.

(c) Requires a local government to demonstrate financial assurance under this section before the date of the initial receipt of waste at the facility, or as soon as practicable if, the facility was in operation and had received waste, on the effective date of this section

SECTION 2. Effective date: upon passage or September 1, 2005.

1-1 By: Estes S.B. No. 1407  
1-2 (In the Senate - Filed March 10, 2005; March 21, 2005, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 18, 2005, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 18, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the demonstration of financial assurance by a local  
1-9 government in relation to the operation of a municipal solid waste  
1-10 landfill facility.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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1-17 local government, including general obligation bonds, revenue  
1-18 bonds, and certificates of obligation.

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1-20 (A) a local government corporation created under  
1-21 Chapter 431, Transportation Code, to act on behalf of a local  
1-22 government; and

1-23 (B) a conservation and reclamation district  
1-24 created under Section 59, Article XVI, Texas Constitution.

1-25 (b) Notwithstanding any requirement of the commission for  
1-26 the demonstration of financial assurance, a local government that  
1-27 owns or operates a municipal solid waste landfill facility  
1-28 regulated by this chapter is considered to have satisfied all  
1-29 requirements of the commission for the demonstration of financial  
1-30 assurance in relation to closure, post-closure, or corrective  
1-31 action, if the local government:

1-32 (1) establishes and passes a financial test in  
1-33 accordance with commission rules; and

1-34 (2) demonstrates that the outstanding bonds of the  
1-35 local government that are not secured by insurance, a letter of  
1-36 credit, or any other collateral or guarantee have a current rating  
1-37 of AAA, AA, A, or BBB as determined by Standard and Poor's or Aaa,  
1-38 Aa, A, or Baa as determined by Moody's.

1-39 (c) A local government must demonstrate financial assurance  
1-40 under this section:

1-41 (1) before the date of the initial receipt of waste at  
1-42 the facility; or

1-43 (2) as soon as practicable if, on the effective date of  
1-44 this section, the facility was in operation and had received waste.

1-45 SECTION 2. This Act takes effect immediately if it receives  
1-46 a vote of two-thirds of all the members elected to each house, as  
1-47 provided by Section 39, Article III, Texas Constitution. If this  
1-48 Act does not receive the vote necessary for immediate effect, this  
1-49 Act takes effect September 1, 2005.

1-50 \* \* \* \* \*

FAVORABLE  
SENATE COMMITTEE REPORT ON

SB     SCR     SJR     SR     HB     HCR     HJR    1407  
 By ESTES  
(Author/Senate Sponsor)  
4/18/05  
(date)

We, your Committee on NATURAL RESOURCES, to which was referred the attached measure, have on 4/12/05, had the same under consideration and I am instructed to report it back with the recommendation (s) that it:

do pass and be printed

do pass and be ordered not printed

and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested.                     yes     no

A revised fiscal note was requested.         yes     no

An actuarial analysis was requested.         yes     no

Considered by subcommittee.                 yes     no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Armbrister, Chair	✓			
Senator Jackson, Vice-Chair	✓			
Senator Barrientos	✓			
Senator Duncan			✓	
Senator Estes	✓			
Senator Fraser	✓			
Senator Hinojosa			✓	
Senator Lindsay	✓			
Senator Madla	✓			
Senator Seliger	✓			
Senator Staples	✓			
<b>TOTAL VOTES</b>	<b>9</b>	<b>0</b>	<b>2</b>	<b>0</b>

COMMITTEE ACTION

S268 Considered in public hearing  
 S270 Testimony taken

Kathy C. Gilbert  
 COMMITTEE CLERK

Ken Ambush  
 CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill  
 Retain one copy of this form for Committee files

WITNESS LIST

SB 1407

SENATE COMMITTEE REPORT

Natural Resources

April 12, 2005 - 1:30PM

FOR: Valdez, Jerry (North Texas Municipal Water District / Texas Area Solid Waste Authority), Austin, TX

## **BILL ANALYSIS**

Senate Research Center  
79R6550 KEG-F

S.B. 1407  
By: Estes  
Natural Resources  
4/11/2005  
As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Certain solid waste facilities are operated and maintained by a political subdivision created by an act of the legislature or an act of a local governmental entity. These facilities are not owned or operated by either a private entity or a single municipality, both of which have specific financial assurance requirements for a facility's closure and post-closure care periods, in accordance with requirements of the Texas Commission on Environmental Quality (TCEQ). TCEQ is forced to defer to the unclear language in the statute and demonstrate financial assurance by way of several financial vehicles for operation, despite the owner's or operator's governmental status.

Under current statute and TCEQ rules, all owners and operators of solid waste disposal facilities are required to demonstrate financial assurance to protect the state through a facility's closure and post-close care periods. Municipalities can choose to demonstrate financial assurance using their bond ratings. Unique political subdivisions, as described above, are not allowed to demonstrate financial assurance through the use of their members' bond ratings and their existence is unclear in statute.

As proposed, S.B. 1407 allows these unique political subdivisions to rely on their own financial strength to demonstrate financial assurance.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter C, Chapter 361, Health and Safety Code, by adding Section 361.0855, as follows:

Sec. 361.0855. DEMONSTRATION OF FINANCIAL ASSISTANCE. (a) Defines "bonds" and "local government."

(b) Provides that a local government that owns or operates a municipal solid waste landfill facility regulated by this chapter is considered to have satisfied all requirements of the Texas Commission on Environmental Quality (TCEQ) for the demonstration of financial assurance in relation to closure, post closure, or corrective action, notwithstanding any requirement of TCEQ for the demonstration of financial assurance, if the local government establishes and passes a financial test in accordance with TCEQ rules and demonstrates that the outstanding bonds of the local government that are not secured by insurance, a letter of credit, or any other collateral or guarantee have a specific current rating.

(c) Requires a local government to demonstrate financial assurance under this section before the date of the initial receipt of waste at the facility, or as soon as practicable if, the facility was in operation and had received waste, on the effective date of this section

SECTION 2. Effective date: upon passage or September 1, 2005.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 11, 2005**

**TO:** Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: SB1407** by Estes (Relating to the demonstration of financial assurance by a local government in relation to the operation of a municipal solid waste landfill facility.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would allow local governments who own or operate a municipal solid waste (MSW) landfill facility to self insure for closure, post closure, or corrective actions at the facilities. To provide financial assurance for closure, post closure, or corrective actions, a local government would have to pass a financial test defined by Texas Commission on Environmental Quality (TCEQ) rules and demonstrate that its outstanding bonds, not secured by insurance, letter of credit, collateral, or other guarantee meet certain bond ratings. The local government would have to demonstrate such financial assurance before it receives waste at a municipal solid waste facility or, if the facility is already in operation, as soon as practicable. The TCEQ does not expect that the bill would result in a significant increase in its workload.

**Local Government Impact**

The bill could have fiscal implications on local government corporations and conservation and reclamation districts that operate a MSW landfill. These local governments should see annual savings for fees currently paid to provide financial assurance instruments. These savings could be significant but they will vary on a case-by-case basis.

**Source Agencies:** 582 Commission on Environmental Quality

**LBB Staff:** JOB, KJG, WK, ZS, TL

# REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN  
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that SB 1407, by ESTES,  
(Bill No.) (Author/Sponsor)

was heard by the Committee on Natural Resources on 4/18,  
2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Kathy C. Gilbert  
(Clerk of the reporting committee)

**IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.**

S.B. No. 1407

By Craig Eto

**A BILL TO BE ENTITLED**

**AN ACT:**

**relating to the demonstration of financial assurance by a local government in relation to the operation of a municipal solid waste landfill facility.**

MAR 10 2005

Filed with the Secretary of the Senate

MAR 21 2005

Read and referred to Committee on NATURAL RESOURCES

APR 18 2005

Reported favorably \_\_\_\_\_

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Read second time, \_\_\_\_\_, and ordered engrossed by: { unanimous consent  
a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Senate and Constitutional 3 Day Rule suspended by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

Read third time, \_\_\_\_\_, and passed by: { A viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_  
SECRETARY OF THE SENATE

**OTHER ACTION:**

\_\_\_\_\_ Engrossed

\_\_\_\_\_ Sent to House

Engrossing Clerk \_\_\_\_\_

\_\_\_\_\_ Received from the Senate

\_\_\_\_\_ Read first time and referred to Committee on \_\_\_\_\_

\_\_\_\_\_ Reported \_\_\_ favorably (as amended) (as substituted)

\_\_\_\_\_ Sent to Committee on (Calendars) (Local & Consent Calendars)

\_\_\_\_\_ Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting.

\_\_\_\_\_ Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_ Returned to Senate.

\_\_\_\_\_ Returned from House without amendment.

\_\_\_\_\_ Returned from House with \_\_\_\_\_ amendments.

\_\_\_\_\_ Concurred in House amendments by a viva voce vote \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_  
CHIEF CLERK OF THE HOUSE

\_\_\_\_\_ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

\_\_\_\_\_ Senate conferees instructed.

\_\_\_\_\_ Senate conferees appointed: \_\_\_\_\_, Chairman; \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_

\_\_\_\_\_ House granted Senate request. House conferees appointed: \_\_\_\_\_, Chairman;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ Conference Committee Report read and filed with the Secretary of the Senate.

\_\_\_\_\_ Conference Committee Report adopted on the part of the House by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

**OTHER ACTION:**

\_\_\_\_\_ Recommitted to Conference Committee

\_\_\_\_\_ Conferees discharged.

\_\_\_\_\_ Conference Committee Report failed of adoption by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays